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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,008

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EXAMINER

JACOBSON, MICHELE LYNN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,008	<b>Applicant(s)</b> TOBBEN ET AL.	
	<b>Examiner</b> MICHELE JACOBSON	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-11, and 14-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pophusen et al. U.S. Patent No. 6,541,087 (hereafter referred to as Pophusen).

3. Pophusen teaches a multilayer, biaxially stretched, heat set, coextruded tubular film made from the following layers disposed from outside to inside (Col. 4, lines 25-47, claim 8):

- a. An outer layer G, which substantially consists of aliphatic polyamide or copolyamide and or partially aromatic polyamide or copolyamide (corresponding to applicant's layer A)
- b. An interlayer F having oxygen barrier properties between outer layer G and core layer E (corresponding to applicant's layer B)
- c. A core layer E, which substantially consists of aliphatic polyamide or copolyamide and or partially aromatic polyamide or copolyamide (corresponding to applicant's layer C)
- d. A coupling layer D (corresponding to applicant's layer D)

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- e. A polyolefinic interlayer C (optional further layer as in f))
  - f. A coupling layer B (corresponding to applicant's layer D)
  - g. An inner layer A, which substantially consists of aliphatic polyamide or copolyamide and or partially aromatic polyamide or copolyamide (Corresponding to applicant's layer E)
4. Preferred polyamides for layers A, E and G are recited to be m-xylylenediamine with adipic acid units (MXD6) and hexamethylenediamine with unites of isophthalic and terephthalic acid (PA 61/6T). The preferred thickness for the layer A is 2-12  $\mu\text{m}$ . (Col. 5, lines 32,44)
5. The coupling layers B and D each comprise preferably a modified polyolefin. Modified polyolefin in the present context is a homo or copolymer of ethylene or propylene each optionally copolymerized with at least one linear  $\alpha$ -olefin having 3 to 8 C atoms, which is grafted with at least one selected monomer from the group consisting of  $\alpha,\beta$ -unsaturated dicarboxylic acids, (such as for example maleic acid, fumaric acid, itaconic acid) their acid anhydrides, acid esters, acid amides or acid imides. Further suitable copolymers are ionomeric copolymers of ethylene and propylene and optionally further linear  $\alpha$ -olefins containing 3 to 8 C atoms copolymerized with  $\alpha,\beta$ -unsaturated carboxylic acids and/or the metal salts thereof and/or the alkyl esters thereof or graft polymers of the stated monomers onto polymers or partially saponified ethylene/vinyl ester copolymers, which are optionally graft polymerized with a monomer of the stated acids. In a preferred embodiment, the layer thicknesses of the coupling agent layers B

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and D are between 1 and 6  $\mu\text{m}$ . The composition of layers B, D may be different or identical. (Col. 6, lines 19-37)

6. Layer F having oxygen barrier properties in particular substantially consists of ethylene/vinyl alcohol copolymers produced by saponification of ethylene/vinyl acetate copolymer. The ethylene content is here preferably between 25 and 47 wt. % and in particular between 29 and 38 wt. %. In a preferred embodiment, the layer thickness of layer F is between 2 and 8  $\mu\text{m}$ , in particular between 3 and 6  $\mu\text{m}$ . The sum of all the layer thicknesses of the coextruded casing is 30 to 80  $\mu\text{m}$ , in particular 35 to 65  $\mu\text{m}$ . (Col. 6, lines 38-47) The invention is recited to be suitable for packaging sausage, cheese, pastry and other pasty and liquid foodstuffs. (Col. 7, lines 8-10)

7. Since layer g) is recited in claim 1 to be part of the optional further layers and additives recited in f), the limitation of the tubular article comprising fibers can be interpreted to not be selected. As such, the casing disclosed by Pophusen with layers corresponding to the layers of applicant, as enumerated above, with the compositions as recited by Pophusen clearly anticipates the limitations as set forth in claims 1-3, 6-11, and 14-19.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pophusen et al. U.S. Patent No. 6,541,087 (hereafter referred to as Pophusen) and Sears et al. U.S. Patent Application Publication No. 2002/0000683 (hereafter referred to as Sears) as motivated by Toshiaki et al. European Patent Application Publication Number 920808 (hereafter referred to as Toshiaki).

10. Pophusen teaches what has been recited above but is silent regarding disclosing cellulose fibers in an amount of 0.1-70% by total weight of the layer within the layers of the casing.

11. Sears teaches improved composites containing cellulosic pulp fibers dispersed in a matrix, wherein the matrix comprises a polymeric material and said cellulosic pulp fibers comprise greater than 1% and less than 60% by weight of the composite. (Para. 16) Suitable polymeric material includes polyamides. (Para. 24)

12. Toshiaki teaches that fibrous casings are preferred for sausage such a casing has good appearance and can produce an image that the sausages are of high quality. (Para. 2) Polyamide films such a polyhexamethylene adipamides which are employed as synthetic plastic casings are advantageous in that they give some smoking effect under high humidity conditions, that they have high tensile strength at break, high impact strength, excellent dimensional stability and excellent oxygen barrier properties. (Para. 3) However, the smoking effect achieved with polyamide films is very small compared with those achieved by fibrous casings. (Para. 3) By the addition of cellulose powder to a polyamide sausage casing its smoking performance is improved and the

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resulting casing has a matted and grained uneven surface which gives the impression that the encased product is of high quality. (Para. 12)

13. Toshiaki teaches the desirability of disposing cellulose material in polyamide material for sausage casings to improve the appearance of the casing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have disposed cellulose fibers as recited by Sears in the invention of Pophusen in order to achieve the benefit of an aesthetically pleasing sausage casing that implied the high quality of the encased product. The combination of Pophusen and Sears would have resulted in the article as claimed in claims 4 and 5.

### ***Response to Arguments***

1. Applicant's arguments filed 7/7/08 have been fully considered but they are not persuasive.
2. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., at least one layer comprising natural fibers) are not recited to be mandatory in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Whether the examiner's interpretation is in conflict with the intention of the whole application is immaterial since claims are intended to be given their broadest reasonable interpretation. In the instant case, the recitation of "wherein" in feature f) of claim 1 indicates that claim g) which directly

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follows is intended to be a limitation applying to feature f). Feature f) is recited to be optional. Therefore it logically follows that if f) is optional and g) is a limitation of f), g) is also optional. Applicant's claim as written would encompass inventions that do not include layers comprising natural fibers. Applicant's argument on page 7 of the remarks that feature g) is mandatory because of the stated recitation in the specification does not change the scope of the claim since limitations from the specification can not be read into the claim. Had applicant simply removed the term "wherein" and substituted it with "and" this rejection could have been overcome.

3. Applicant asserts on page 8 of the remarks that Toshiaki does not suggest the claimed subject matter because it is directed to a single layer sausage casing. However, note that while Toshiaki do not disclose all the features of the present claimed invention, Toshiaki is used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, namely, the addition of cellulose powder to a sausage casing in order to improve the appearance of the casing and in combination with the primary reference, discloses the presently claimed invention. Applicant states on page 9 of the remarks that "there is no hint in Toshiaki to exclude the cellulose acetate propionate" which is incorrect since Toshiaki specifically recites the use of cellulose acetate propionate. Applicant appears to be asserting that because Toshiaki only recites cellulose acetate propionate as a cellulose material that one of ordinary skill would not be motivated to use natural



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cellulose fibers. However, the examiner does not find this argument persuasive since Toshiaki clearly states the usefulness of cellulose materials and it is well known in the sausage casing art that fibrous casings are beneficial. As such, one of ordinary skill would be motivated to utilize a cellulose material containing polyamide composition as recited by Sears as a layer in the sausage casing as recited by Pophusen in order to improve the appearance of the casing produced.

4. Applicant states on page 9 of the remarks that the examples recited in the specification establish the criticality of using the fibers. It is unclear where this argument is directed since the examiner did not dispute the criticality of the disposition of fibers in the claims that fibers are recited to be necessary (i.e. 4 and 5).

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE JACOBSON whose telephone number is (571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-7 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Lawrence Tarazano/  
Supervisory Patent Examiner, Art Unit 1794

Michele L. Jacobson  
Examiner /M. J./  
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